


COURT OF APPEAL NO. 48698-9-11

IN THE COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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In re the Marriage of  
ROYAL M. FISH, SR.,  
Appellant/Cross-Respondent,  
And  
LISA ANNE FISH,  
Respondent/Cross-Appellant.

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FILED  
COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
BY   
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BRIEF OF RESPONDENT/CROSS-APPELLANT

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Lisa A. Fish  
Pro se

3501 Rodgers St.  
Bremerton, WA 98312  
360.865.8091

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## **I. Introduction**

This case is not a complex case. The case has become more complicated by Royal's interpretations' of Paragraph 3.7 of the Decree of Dissolution, entered on June 13, 2014, CP 333, provided in pertinent part:

Spousal maintenance shall terminate upon the sooner of either party's death, wife's remarriage, or husband reaching his 66<sup>th</sup> birthday. Spousal maintenance may be reviewed earlier upon either party's loss of their employment income whether occurring as a result of involuntary loss of employment or for medical reasons with such circumstances constituting a substantial change in circumstances allowing said review.

Royal Fish had requested the court to terminate maintenance obligation, instead of a review of the maintenance order, and also requiring Lisa Fish to pay maintenance to Royal Fish. Which were the basis for the trial.

The case has become complicated only because of Royal's intransigence, voluntary unemployment, questionable credibility, and unwillingness to pay spousal maintenance that could not be substantiated by the facts of the case.

## **II. Cross Appeal Assignments of Error**

1. The court erred in part by finding in the Order on Modification of Spousal Support, line 4 of page 2, which states in part:

The court denies both parties' requests for attorney's fees as it relates to the trial on modification of spousal maintenance.

2. The court erred in part by finding in the Findings/Conclusions on Petition for Modification of Spousal Support, Paragraph 2.2 Reasons for Modification, which states in part:

The Decree of Dissolution entered on June 13, 2014, at Paragraph 3.7, shall be modified be modified(sic) due to the fact that, commencing June 2015, the issue of not being able to work do(sic) to medical reasons was raised in this case. The Court found this claim credible based upon the findings of the Social Security Administration. The court suspends the transfer payment effective June 1, 2015, but does not terminate the spousal maintenance.

The verbatim report of proceedings of the findings and decision of the Honorable Jennifer A. Forbes, a Judge of Kitsap County Superior Court, is attached hereto as **Exhibit A** and is incorporated herein by reference as though full set forth herein.

3. The Court erred by finding in the Findings/Conclusions on Petition for Modification of Spousal Support, Paragraph 2.3

Attorney Fees and Costs, which states: Neither party shall be awarded attorney's fees or costs as it relates to the modification of spousal maintenance.

### **III. Issues Pertaining to Assignments of Error**

1. Does substantial evidence support the court's finding in the decision to not award attorney fees as it relates to the trial on modification of spousal maintenance?
2. Did the court abuse its discretion by failing to award Lisa Fish attorney's fees or costs as it relates to the modification of spousal maintenance?

### **IV. Restatement of The Case**

This restatement of the case provides the background for the trial court's decisions on Findings/Conclusions on Petition for Modification of Spousal Support. CP 215-231

#### **A. Background**

Royal and Lisa Fish married in October 1979. Lisa was age 17, Royal was age 25, this was a long term relationship.<sup>1</sup>  
1/04/2016 RP 25, 93, CP 162,172.

During the marriage Royal was in the military. Lisa traveled with him to several military installations. 1/04/2016 RP 93, CP 172. The couple had three children, born between 1980 and 1990. Lisa was primarily responsible for the daily care and needs of the children, and found part-time work as the family's frequent relocations and the children's schedules allowed. 1/04/2016 RP 25, CP 172.

Royal has been employed in a full time by Bat West, Inc. since 2009. CP 190.

Lisa has been employed full-time as an AutoCAD operator at Safe Boats International since 2006. 1/04/2016 RP 46, CP 898

The parties settled their divorce case in mediation with Robert Beattie on March 17, 2014. Their binding CR2A settlement agreement, CP 314, provided that Royal would pay to Lisa spousal maintenance of \$3,800 per month until the sooner of either party's

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<sup>1</sup> For ease of consideration Royal Fish will be referred to as "Royal" and Lisa Fish will be referred to as "Lisa". No disrespect is intended to either party.



death, Lisa's remarriage, or Royal's 66<sup>th</sup> birthday. 1/04/2016 RP 34-35, CP 314, 332-333. Based on Royal's claims that his Bay West position was precarious and there would likely be no work available to him after June 2014, 1/04/2016 RP 37, 71. CP 162, 173, the parties' agreed that spousal maintenance could be reviewed upon either party's loss of income for involuntary loss of employment or for medical reasons. 1/04/2016 RP 98, 180.

While during the course of this case Royal has repeatedly cited *Marriage of Rockwell*, 157 Wn. App. 449, 238 P.3d 1184 (2010), his reliance on this case is misplaced. 1/04/2016 RP 131, CP 163, 165. The *Rockwell* case is a property case – it does not address spousal maintenance. The *Rockwell* cases “concerned the just and equitable division and distribution of property under RCW 26.09.080, not entitlement to spousal maintenance.” *In re Marriage of Kile*, 186 Wn. App. 864, 887, 347 P.3d 894 (2015). CP 178.

Royal testified that the spousal maintenance was based on income declared in the CR2A settlement agreement, which did not include per diem. 1/04/2016 RP 158.

Royal testified he received per diem which was not calculated in the spousal maintenance, 1/04/2016 RP 123-124, CP 345-348.

The Decree of Dissolution incorporating the parties' agreements was entered on June 13, 2014. CP 320-335. Just seven months later, on January 21, 2015, Royal filed the pending petition for modification of spousal maintenance. 02/19/2016 RP 9-10. Though no court order has relieved him of his monthly spousal maintenance obligation pursuant to the Decree of Dissolution, CP 323. Royal made no payment since December 2014 and is currently \$45,600 in arrears. 1/04/2016 RP 77, 150, 190

Royal had the means to pay his monthly spousal maintenance obligation. 1/04/2016 RP 119-124, CP 713-716.

There was no evidence to support the Petition for Modification of Maintenance, CP 4, that was based on involuntary loss of employment. 1/04/2016 RP 41, 145-146, CP 201-203, 204-206, 845.

Royal testified that he had Bay West Inc., human resources department draft a letter to help him secure a home loan based on

his personal leave in April, 2015. 1/04/2016 RP 169-176, CP 199-200, 209.

On August 17, 2015, the Social Security Administration found that Royal was 100% disabled, and thus unable to work as of December 5, 2014. 1/04/2016 RP 111, CP 776. As of December 5, 2014, Royal had options available to him being disabled, short-term and long-term disability, to ensure that his lively hood was not compromised, and or that of Lisa's. CP 164, 193. Royal had a Protective Term Life Insurance Policy that was in effect, CP 678. As stated in the CR2A, CP 314, this policy was to secure his future spousal maintenance obligations.

## **V. Argument**

### **A. The Court Committed a Reversible Error When It Failed to Award Lisa Attorney's Fees for Trail Despite its Determination of Royal's Intransigence.**

The court may award fees basis of intransigence. If intransigence is established, the financial resources of the spouse seeking the award are irrelevant. *Re Marriage of Crosetto, supra at* 564. The court may consider "the extent to which one spouse's intransigence caused the spouse seeking a fee award to require additional legal services," *Crosetto, supra*. However, "where a

party's bad acts permeate the entire proceedings, the court need not segregate which fees were incurred as a result of intransigence and which were not." *In re Marriage of Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993 (2002), review denied, 149 Wn. 2d 1007 (2003).

According to the court, CP 219-220:

The primary issue that I'm going to address first is the question of modification. I will say that I don't find Mr. Fish to be particularly credible person based on somewhat part of his history in this case and some of his history he's had in terms of presenting evidence. It was somewhat interesting that his initial claims were for one thing and that it evolved to another thing. And that he didn't have the information that he needed when it was needed.

Establishing the fact of Royal's intransigence.

**B. The Court Committed Reversible Error and Abused Its Discretion by Failing to Award Lisa Fish Attorney's Fees or Costs as It Relates to The Modification of Spousal Maintenance.**

The court also had the authority to award attorney fees and costs pursuant to RCW 4.84.185, which authorizes and award of attorney fees incurred in opposing a frivolous action. The statute states are designed to discourage abuses of the legal system by providing for an award of expenses and legal fees to any party forced to defend against **meritless claims** advanced for

harassment, delay, nuisance, or spite. *Skimming v. Baser*, 119 Wn. App. 748, 756, 82 P.3d 707 (2004)

There was an abuse of the court's discretion, its reason for not awarding Lisa attorney fees and costs, based on Royal's Petition for Modification of Maintenance he filed, CP 4, 209. 1/4/2016 RP 116,119-120, 125, 130-131, 169-177.

Voluntary underemployment is grounds for a finding of intransigence Further intransigence includes "incremental disclosure of income" and less than candid portrayal of contract termination with employer. *In re marriage of Mattson*, 95 Wn. App. 592, 976 P.2d 157 (1999)

## **VI. Response Argument**

### **A. The Court Acted within its Discretion by Commencing the Modification as of June, 2015 Because That Was When Royal Fish Raised the Issue of His Inability to Work.**

The Letter from Social Security was in August and Royal brought up issues with health in June. The evidence supports its findings.

### **B. The Court Considered the Economic Condition of Royal Fish.**

The Court based the findings on the trial testimonies and the fact he didn't pay and still had the order to pay. The evidence supports its findings`

**C. The Court Committed no Error or Abuse in its Discretion by Refusing to Award Royal Maintenance from January/February 2015 Through May 2015**

It was within the discretion of the court to not award Royal maintenance partly because Royal and Lisa have roughly in the economic condition. The evidence supports its findings.

**D. The Court Committed no Error or Abuse in its Discretion by Suspending Rather Than Terminating to Award Royal's Maintenance**

The court committed no Error in keeping with the original order of Paragraph 3.7 of the decree of Dissolution, entered on June 13, 2014, CP 333, provided in pertinent part:

Spousal maintenance shall terminate upon the sooner of either party's death, wife's remarriage, or husband reaching his 66<sup>th</sup> birthday. Spousal maintenance may be reviewed earlier upon either party's loss of their employment income whether occurring as a result of involuntary loss of employment or for medical reasons with such circumstances constituting a substantial change in circumstances allowing said review.

## **VII. Conclusion**

Royal argues in his appeal brief that the court erred in all of its substantive findings. His appeal brief simply represents the same facts that were presented to the court and rejected same facts that were presented to the court and rejected. These facts were before the court with significantly more than that which is attacked in Royal's Brief. The Court had the benefit of trial and reviewing exhibits. The court had the opportunity to hear both parties and to access the evidence provided. The findings of the court are clear and understandable and are supported by record.

The court considered all of the relevant facts and acted within its discretion to arrive at a ruling that was just and fair given the circumstances in this case.

Respectfully submitted this 22nd day of August, 2016.

A handwritten signature in black ink, appearing to read 'L. Fish', written over a horizontal line.

Lisa Fish  
Pro Se

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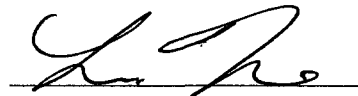
### **CERTIFICATE OF SERVICE**

I certify that on the 22nd day of August, 2016, I caused a copy of The Foregoing Respondent/Cross-Appellant's Opening Brief to be delivered by courier, to the Appellant/ Cross-Respondent at the following address:

Berry & Beckett, P.L.L.P.  
1708 Bellevue Avenue  
Seattle, Washington 98122

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 22nd day of August, at Bremerton, Washington



Lisa Fish  
Pro Se